

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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LEWERREN WASHINGTON,

Plaintiff,

Case No. 1:24-cv-377

v.

Honorable Sally J. Berens

JEFF STOKES et al.,

Defendants.

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**OPINION**

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. The Court will grant Plaintiff leave to proceed *in forma pauperis*. Pursuant to 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure, Plaintiff consented to proceed in all matters in this action under the jurisdiction of a United States magistrate judge. (ECF No. 9.)

This case is presently before the Court for preliminary review under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court is required to conduct this initial review prior to the service of the complaint. *See In re Prison Litig. Reform Act*, 105 F.3d 1131, 1131, 1134 (6th Cir. 1997); *McGore v. Wrigglesworth*, 114 F.3d 601, 604–05 (6th Cir. 1997).

Service of the complaint on the named defendants is of particular significance in defining a putative defendant's relationship to the proceedings. “An individual or entity named as a defendant is not obliged to engage in litigation unless notified of the action, and brought under a court's authority, by formal process.” *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999). “Service of process, under longstanding tradition in our system of justice, is

fundamental to any procedural imposition on a named defendant.” *Id.* at 350. “[O]ne becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend.” *Id.* (citations omitted). That is, “[u]nless a named defendant agrees to waive service, the summons continues to function as the *sine qua non* directing an individual or entity to participate in a civil action or forgo procedural or substantive rights.” *Id.* at 351. Therefore, the PLRA, by requiring courts to review and even resolve a plaintiff’s claims before service, creates a circumstance where there may only be one party to the proceeding—the plaintiff—at the district court level and on appeal. *See, e.g., Conway v. Fayette Cnty. Gov’t*, 212 F. App’x 418 (6th Cir. 2007) (“Pursuant to 28 U.S.C. § 1915A, the district court screened the complaint and dismissed it without prejudice before service was made upon any of the defendants . . . [such that] . . . only [the plaintiff] [wa]s a party to this appeal.”).

Here, Plaintiff has consented to a United States magistrate judge conducting all proceedings in this case under 28 U.S.C. § 636(c). That statute provides that “[u]pon the consent of the parties, a full-time United States magistrate judge . . . may conduct any or all proceedings . . . and order the entry of judgment in the case . . .” 28 U.S.C. § 636(c). Because the named Defendants have not yet been served, the undersigned concludes that they are not presently parties whose consent is required to permit the undersigned to conduct a preliminary review under the PLRA, in the same way they are not parties who will be served with or given notice of this opinion. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995) (“The record does not contain a

consent from the defendants[; h]owever, because they had not been served, they were not parties to this action at the time the magistrate entered judgment.”).<sup>1</sup>

Under the PLRA, the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff’s *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff’s allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff’s complaint for failure to state a claim against Defendants Unknown Parties #1 and #2. The Court will also dismiss, for failure to state a claim, Plaintiff’s request for injunctive relief, and the following claims against remaining Defendants Stokes and Nelson: First Amendment retaliation claims and Fourteenth Amendment due process claims. Plaintiff’s Eighth Amendment excessive force claims against Defendants Stokes and Nelson will remain in the case.

### **Discussion**

#### **I. Factual Allegations**

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Bellamy Creek Correctional Facility (IBC) in Ionia, Ionia County, Michigan. The events

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<sup>1</sup> *But see Coleman v. Lab. & Indus. Rev. Comm’n of Wis.*, 860 F.3d 461, 471 (7th Cir. 2017) (concluding that, when determining which parties are required to consent to proceed before a United States magistrate judge under 28 U.S.C. § 636(c), “context matters” and the context the United States Supreme Court considered in *Murphy Bros.* was nothing like the context of a screening dismissal pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c)); *Williams v. King*, 875 F.3d 500, 503–04 (9th Cir. 2017) (relying on Black’s Law Dictionary for the definition of “parties” and not addressing *Murphy Bros.*); *Burton v. Schamp*, 25 F.4th 198, 207 n.26 (3d Cir. 2022) (premising its discussion of “the term ‘parties’ solely in relation to its meaning in Section 636(c)(1), and . . . not tak[ing] an opinion on the meaning of ‘parties’ in other contexts”).

about which he complains occurred at that facility. Plaintiff sues the following IBC officials: Correctional Officers Jeff Stokes, Jesse Nelson, Unknown Party #1, and Unknown Party #2. (Compl., ECF No. 1, PageID.1, 2–3.)

In Plaintiff's complaint, he alleges that on July 26, 2023, Defendants Stokes and Nelson placed Plaintiff in handcuffs and escorted him to segregation after he "received an assault pertaining to an officer outside of this claim."<sup>2</sup> (*Id.*, PageID.7.) "While on the walk, spontaneously, [Defendant] Nelson hooked his leg around [Plaintiff's] and tripped [Plaintiff], intentionally pushing down with all the weight of his person in sync with [Defendant] Stokes." (*Id.*) Plaintiff alleges that this resulted "in [Plaintiff's] face, head, shoulders, [and] arms . . . scraping the [concrete] pavement and being the direct cause of [Plaintiff's] injur[ies]." (*Id.*, PageID.7, 10.) Plaintiff was then dragged and "kneed by officers." (*Id.*, PageID.7.)

As to Plaintiff's injuries, he states that he "had a gash" on the left side of his head, his "left shoulder was bruised and scraped to the point of muscle exposure," and his "left arm and knee were also scraped and bruised to the point of muscle exposure." (*Id.*, PageID.8.) Plaintiff was taken to the hospital, and he also was treated by healthcare at IBC. (*Id.*)

Based on the foregoing allegations, Plaintiff avers that Defendants violated his rights under the First, Eighth, and Fourteenth Amendments to the U.S. Constitution. (*Id.*, PageID.4, 5.) As relief, Plaintiff seeks compensatory and punitive damages, as well as injunctive relief in the form of Defendants being terminated from their employment. (*Id.*, PageID.8.)

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<sup>2</sup> In this opinion, the Court corrects the capitalization and punctuation in quotations from Plaintiff's complaint.

## II. Failure to State a Claim

A complaint may be dismissed for failure to state a claim if it fails “to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff’s allegations must include more than labels and conclusions. *Id.*; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a “‘probability requirement,’ . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(ii)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because Section 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under Section 1983

is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

#### **A. Injunctive Relief**

In addition to requesting monetary damages, Plaintiff seeks injunctive relief in the form of Defendants being terminated from their employment. (Compl., ECF No. 1, PageID.8.)

As relevant to Plaintiff's request for injunctive relief, past exposure to an isolated incident of illegal conduct does not, by itself, sufficiently prove that the plaintiff will be subjected to the illegal conduct again, and, typically, injunctive relief is not available "absent a sufficient likelihood that [the plaintiff] will again be wronged in a similar way." *See, e.g., Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (addressing injunctive relief). A court should assume that, absent an official policy or practice urging unconstitutional behavior, individual government officials will act constitutionally. *Id.* at 102; *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974).

In the present action, Plaintiff does not allege the existence of an official policy or practice, or suggest that the activities alleged in the complaint are likely to occur again. Instead, Plaintiff's allegations relate solely to past harm, not future risk of harm. Therefore, Plaintiff does not seek relief properly characterized as prospective, and injunctive relief is unavailable to him.

Furthermore, courts have found that they do not have the authority to order that correctional officials be terminated from their employment. *See, e.g., Williams v. Maynard*, No. 23-CV-1320, 2023 WL 3674332, at \*1 n.3 (E.D. Pa. May 25, 2023) (collecting cases); *Pagonis v. Raines*, No. 4:17-CV-01-DC-DF, 2018 WL 9240919, at \*4 (W.D. Tex. Aug. 10, 2018) ("Federal courts are not prison managers' and injunctive relief in the form of an order to terminate a prison official's employment is not available in a § 1983 action." (citations omitted)), *report and recommendation adopted*, No. PE:17-CV-00001-DC, 2018 WL 9240916 (W.D. Tex. Sept. 10, 2018).

Accordingly, for these reasons, Plaintiff's request for injunctive relief will be dismissed.

**B. Defendants Unknown Parties #1 and #2**

Plaintiff fails to allege sufficient facts showing how Defendants Unknown Party #1 and #2 were personally involved in the violation of his constitutional rights. (*See generally* Compl., ECF No. 1.) Plaintiff lists these Defendants in the action. However, Plaintiff fails to include Defendants Unknown Party #1 and #2 when setting forth his factual allegations. (*See id.*, PageID.3, 5, 7.) Where a person is named as a defendant without an allegation of specific conduct, the complaint is subject to dismissal, even under the liberal construction afforded to *pro se* complaints. *See Gilmore v. Corr. Corp. of Am.*, 92 F. App'x 188, 190 (6th Cir. 2004); *Frazier v. Michigan*, 41 F. App'x 762, 764 (6th Cir. 2002) (dismissing plaintiff's claims where the complaint did not allege with any degree of specificity which of the named defendants were personally involved in or responsible for each alleged violation of rights). Although Plaintiff alleges that he was dragged and "kneed by officers," Plaintiff does not identify these officers as Defendants Unknown Party #1 and #2, and any "[s]ummary reference to a single, five-headed 'Defendants' [or officers] does not support a reasonable inference that each Defendant is liable . . ." *Boxill v. O'Grady*, 935 F.3d 510, 518 (6th Cir. 2019) (citation omitted) ("This Court has consistently held that damage claims against government officials arising from alleged violations of constitutional rights must allege, with particularity, facts that demonstrate what each defendant did to violate the asserted constitutional right." (quoting *Lanman v. Hinson*, 529 F.3d 673, 684 (6th Cir. 2008))). Thus, Plaintiff's claims against Defendants Unknown Party #1 and #2 fall far short of the minimal pleading standards under Rule 8 of the Federal Rules of Civil Procedure and are subject to dismissal. Fed. R. Civ. P. 8(a)(2) (requiring "a short and plain statement of the claim showing that the pleader is entitled to relief").

Accordingly, for these reasons, Plaintiff's claims against Defendants Unknown Party #1 and #2 will be dismissed.

**C. Defendants Stokes and Nelson**

**1. First Amendment Retaliation Claims**

Without providing any further explanation, Plaintiff claims that Defendants used their “authoritative positions to take justice into their own hands and retaliated against [Plaintiff].” (Compl., ECF No. 1, PageID.5.) The Court construes this allegation to raise a First Amendment retaliation claim.

Retaliation based upon a prisoner’s exercise of his or her constitutional rights violates the Constitution. *See Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc). To set forth a First Amendment retaliation claim, a plaintiff must establish three elements: (1) he was engaged in protected conduct; (2) an adverse action was taken against him that would deter a person of ordinary firmness from engaging in that conduct; and (3) the adverse action was motivated, at least in part, by the protected conduct. *Id.* Moreover, a plaintiff must be able to show that the exercise of the protected right was a substantial or motivating factor in the defendant’s alleged retaliatory conduct. *See Smith v. Campbell*, 250 F.3d 1032, 1037 (6th Cir. 2001) (citing *Mount Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977)).

Here, Plaintiff’s retaliation claim fails at the first step because he fails to allege any facts showing that he engaged in protected conduct prior to Defendants Stokes and Nelson transporting him to segregation. Instead, Plaintiff states that Defendants Stokes and Nelson were escorting him to segregation after he “received an assault pertaining to an officer outside of this claim.” (Compl., ECF No. 1, PageID.7.) Plaintiff’s allegations suggest that he was accused of assaulting an officer, and such an assault would violate the prison’s policies and procedures. *See* MDOC Policy Directive 03.03.105, Attach. A (eff. Apr. 18, 2022) (indicating that assault and battery is a class I misconduct charge). “[I]f a prisoner violates a legitimate prison regulation, he is not engaged in ‘protected conduct.’” *Thaddeus-X*, 175 F.3d at 395. Therefore, Plaintiff merely alleges the ultimate

fact of retaliation, but he fails to allege sufficient factual allegations to support his claim. *See Murphy v. Lane*, 833 F.2d 106, 108 (7th Cir. 1987). Accordingly, Plaintiff's First Amendment retaliation claims will be dismissed.

## 2. Eighth Amendment Claims

Plaintiff alleges that Defendants Stokes and Nelson used excessive force against him while transporting him to segregation on July 26, 2023. (Compl., ECF No. 1, PageID.4, 7.)

The Eighth Amendment prohibits conditions of confinement which, although not physically barbarous, “involve the unnecessary and wanton infliction of pain.” *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981). (quoting *Gregg v. Georgia*, 428 U.S. 153, 183 (1976)). Among unnecessary and wanton inflictions of pain are those that are “totally without penological justification.” *Id.* However, not every shove or restraint gives rise to a constitutional violation. *Parrish v. Johnson*, 800 F.2d 600, 604 (6th Cir. 1986); *see also Hudson v. McMillian*, 503 U.S. 1, 9 (1992). “On occasion, ‘[t]he maintenance of prison security and discipline may require that inmates be subjected to physical contact actionable as assault under common law.’” *Cordell v. McKinney*, 759 F.3d 573, 580 (6th Cir. 2014) (quoting *Combs v. Wilkinson*, 315 F.3d 548, 556 (6th Cir. 2002)). Prison officials nonetheless violate the Eighth Amendment when their “offending conduct reflects an unnecessary and wanton infliction of pain.” *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Pelfrey v. Chambers*, 43 F.3d 1034, 1037 (6th Cir. 1995)); *Bailey v. Golladay*, 421 F. App'x 579, 582 (6th Cir. 2011).

There is an objective component and a subjective component to this type of Eighth Amendment claim. *Santiago v. Ringle*, 734 F.3d 585, 590 (6th Cir. 2013) (citing *Comstock v. McCrary*, 273 F.3d 693, 702 (6th Cir. 2001)). First, “[t]he subjective component focuses on the state of mind of the prison officials.” *Williams*, 631 F.3d at 383. Courts ask “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to

cause harm.” *Hudson*, 503 U.S. at 7. Second, “[t]he objective component requires the pain inflicted to be ‘sufficiently serious.’” *Williams*, 631 F.3d at 383 (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). “The Eighth Amendment’s prohibition of ‘cruel and unusual’ punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort ‘repugnant to the conscience of mankind.’” *Hudson*, 503 U.S. at 9–10 (quoting *Whitley v. Albers*, 475 U.S. 312, 327 (1986)). The objective component requires a “contextual” investigation that is “responsive to ‘contemporary standards of decency.’” *Id.* at 8 (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). Although the extent of a prisoner’s injury may help determine the amount of force used by the prison official, it is not dispositive of whether an Eighth Amendment violation has occurred. *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010). “When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated . . . [w]hether or not significant injury is evident.” *Hudson*, 503 U.S. at 9.

Here, Plaintiff alleges that while Defendants Stokes and Nelson were transporting him to segregation, “spontaneously, [Defendant] Nelson hooked his leg around [Plaintiff’s] and tripped [Plaintiff], intentionally pushing down with all the weight of his person in sync with [Defendant] Stokes.” (Compl., ECF No. 1, PageID.7.) Plaintiff alleges that this resulted “in [Plaintiff’s] face, head, shoulders, [and] arms . . . scraping the [concrete] pavement and being the direct cause of [Plaintiff’s] injur[ies],” which included “a gash” on the left side of his head, his “left shoulder was bruised and scraped to the point of muscle exposure,” and his “left arm and knee were also scraped and bruised to the point of muscle exposure.” (*Id.*, PageID.7, 8, 10.) Although Plaintiff has by no means proven his Eighth Amendment claims, taking Plaintiff’s factual allegations as true and in

the light most favorable to Plaintiff, the Court will not dismiss Plaintiff's Eighth Amendment excessive force claims against Defendants Stokes and Nelson on initial review.

### **3. Fourteenth Amendment Claims**

Plaintiff alleges that Defendants' actions showed a "disregard to human life and [Plaintiff's] due process rights." (Compl., ECF No. 1, PageID.5.) The Court construes this allegation to raise a Fourteenth Amendment substantive due process claim.

"Substantive due process . . . serves the goal of preventing governmental power from being used for purposes of oppression, regardless of the fairness of the procedures used." *Pittman v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs.*, 640 F.3d 716, 728 (6th Cir. 2011) (quoting *Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996)). Specifically, "[s]ubstantive due process 'prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty.'" *Prater v. City of Burnside*, 289 F.3d 417, 431 (6th Cir. 2002) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). "Conduct shocks the conscience if it 'violates the decencies of civilized conduct.'" *Range v. Douglas*, 763 F.3d 573, 589 (6th Cir. 2014) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998)).

Here, the Court does not minimize Plaintiff's experience; however, the facts alleged in the complaint fall short of demonstrating the sort of egregious conduct that would support a substantive due process claim. *Cf. Cale v. Johnson*, 861 F.2d 943, 950 (6th Cir. 1988) (holding that framing an inmate by planting evidence may violate substantive due process where a defendant's conduct shocks the conscience and constitutes an "egregious abuse of governmental power"), *overruled in other part by Thaddeus-X*, 175 F.3d at 387; *Davis v. Gallagher*, No. 1:16-cv-1405, 2016 WL 7403941, \*4 (W.D. Mich. Dec. 22, 2016).

Accordingly, Plaintiff's Fourteenth Amendment due process claims against Defendants Stokes and Nelson will be dismissed.

**Conclusion**

The Court will grant Plaintiff leave to proceed *in forma pauperis*. Having conducted the review required by the PLRA, the Court determines that Defendants Unknown Parties #1 and #2 will be dismissed for failure to state a claim under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court will also dismiss, for failure to state a claim, Plaintiff's request for injunctive relief, and the following claims against remaining Defendants Stokes and Nelson: First Amendment retaliation claims and Fourteenth Amendment due process claims. Plaintiff's Eighth Amendment excessive force claims against Defendants Stokes and Nelson remain in the case.

An order consistent with this opinion will be entered.

Dated: May 15, 2024

/s/ Sally J. Berens  
SALLY J. BERENS  
United States Magistrate Judge